

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK P.,	:	
	:	
Plaintiff,	:	Case No. 2:20-cv-5478
	:	
v.	:	Chief Judge Algenon L. Marbley
	:	
COMMISSIONER OF SOCIAL	:	Magistrate Judge Elizabeth P. Deavers
SECURITY,	:	
	:	
Defendant.	:	

ORDER

This matter comes before this Court on Plaintiff Mark P.’s unopposed Motion to Dismiss. (ECF No. 24). For the foregoing reasons, Plaintiff’s Motion is **GRANTED**.

Plaintiff protectively filed his application for Social Security benefits on February 21, 2018. (ECF No. 12 at 195). After having his application denied, Plaintiff sought review through the administrative process. (*Id.* 54–68, 133–34). Following an adverse decision from the Administrative Law Judge, Plaintiff sought judicial review in this Court. Plaintiff filed his Complaint on October 18, 2020, and shortly thereafter, Defendant filed the Certified Administrative Record. (*See* ECF Nos. 1, 12). After Plaintiff’s Statement of Errors, (ECF No. 15), was filed and fully briefed, (ECF No. 20), the Magistrate Judge issued a Report and Recommendation (“R&R”), recommending the Commissioner’s decision be affirmed. (ECF No. 21). Plaintiff did not object to the R&R.

Before this Court could rule on the R&R, Plaintiff filed a Notice of Dismissal seeking to dismiss voluntarily this action. (ECF No. 22). Plaintiff represented that he planned to pursue a new application for Social Security Benefits, and no longer wished to pursue the instant action. (*Id.*). Upon review of that filing, the Magistrate Judge determined that it failed to comply with Federal

Rule of Civil Procedure 41(a)(1) because it lacked signatures from all parties who had appeared. (See ECF No. 23). The Magistrate Judge informed Plaintiff that he may either file an amended notice or seek dismissal by Court Order pursuant to Federal Rule of Civil Procedure 41(a)(2). (*Id.*).

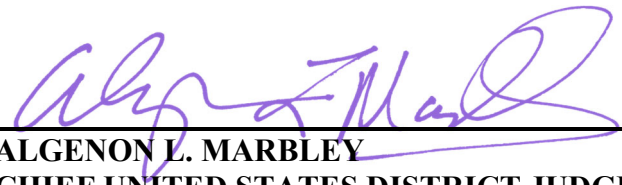
On February 3, 2022, Plaintiff filed a Motion to Dismiss, pursuant to Rule 41(a)(2). (ECF No. 24). After Plaintiff filed his Motion, the Magistrate Judge issued an Order directing Defendant to file a response on or before February 11, 2022. (See ECF No. 25). As of the date of this Order, Defendant has not filed a response to Plaintiff's Motion. As the time for filing a response has long since passed, this Court will treat Plaintiff's Motion as unopposed.

Federal Rule of Civil Procedure 41 provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." F. R. Civ. P. 41(a)(2). Unless the order granting dismissal states otherwise, such a dismissal is without prejudice. *Id.* It is within the "sound discretion" of the district court to grant a Rule 41(a)(2) motion for a voluntary dismissal. *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). "Dismissal without prejudice is appropriate unless '[the] defendant would suffer plain legal prejudice ... as opposed to facing the mere prospect of a second lawsuit.'" *Robinette v. Olentangy Loc. Sch.*, No. C2-08-CV-149, 2008 WL 4593647 at *1 (S.D. Ohio Oct. 14, 2008) (Marbley, J.) (quoting *Grover*, 33 F.3d at 718). To determine whether the defendant will suffer legal prejudice as a result of dismissal without prejudice, a court should consider: (1) how much effort and expense the defendant has expended in the matter; (2) any lack of diligence on the plaintiff's part in prosecuting the case; (3) whether the plaintiff has given sufficient explanation of her need to take a dismissal; and (4) whether the defendant has filed a motion for summary judgment. *Id.* (citing *Grover*, 33 F.3d at 718).

All these factors counsel for dismissal. Most prominently, Plaintiff decided to pursue a new application for benefits and seeks to dismiss this case while pursuing the alternative application. (ECF No. 24 at 2). In addition, there is no evidence of a lack of diligence by Plaintiff. Lastly, and most significantly, there has been no showing of prejudice to Defendant, particularly as it has not responded to Plaintiff's Motion to Dismiss. Therefore, this Court finds good cause shown and finds the terms proper for dismissal without prejudice.

For the reasons set forth above, Plaintiff's Motion to Dismiss (ECF No. 24) is **GRANTED**. Accordingly, this action is **DISMISSED without prejudice**.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: June 22, 2022